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8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE EASTERN DISTRICT OF CALIFORNIA**
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11 STEVEN QUINONES,

12 Plaintiff,

13 v.

14 ROB ST. ANDRE, et al.,

15 Defendants.
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No. 2:22-CV-0833-KJM-DMC-P

FINDINGS AND RECOMMENDATIONS

17 Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to
18 42 U.S.C. § 1983. Pending before the Court is Plaintiff's original complaint, ECF No. 1.

19 On September 21, 2022, the Court issued an order addressing the sufficiency of
20 Plaintiff's complaint as required under the Prison Litigation Reform Act. See ECF No. 11. In
21 that order, the Court summarized Plaintiff's allegations as follows:

22 Plaintiff is a prisoner currently housed at High Desert State
23 Prison, located in Susanville, California. See ECF No. 1. Plaintiff brings
24 suit against the following defendants: (1) Robert St. Andre, Warden; (2)
25 Dr. Richard Gray; (3) Dr. Robert C. Fox; (4) John Doe I; (5) John Doe II;
26 and (6) the California Department of Corrections and Rehabilitations
(CDCR). Id. at 2. Plaintiff alleges violation of his Eighth Amendment
rights against the named defendants for deliberate indifference towards his
medical care. Id.

27 Plaintiff alleges that, on May 30, 2019, upon Plaintiff's
arrival at High Desert State Prison, Plaintiff was assigned the upper level
of the bunk bed. Id. Plaintiff stated to Defendant Doe I that he needed to
be placed on the lower level of the bunk bed because he has gout. Id.
28 Defendant Doe I ordered Plaintiff to take the upper level of the bunk bed,

1 or he would receive a Rule Violation Report. Id. On the same night,
2 Plaintiff fell off the upper level of the bunk bed, which led to severe
3 injuries. Id. The following morning, Plaintiff's cell mate reported the fall
4 to Defendant Doe II. Id. at 5. Plaintiff was moved to the lower level of the
5 bunk bed after the incident. Id.

6 According to Plaintiff, on June 2, Plaintiff stated that his
7 head was still hurting from the fall and his left eyeball began to secrete
8 blood. Id. Plaintiff alleges that Defendant Doe I should have listened to
9 his plea for the lower level of the bunk bed, thus, his injuries could have
10 been avoided. Id. Plaintiff alleges that Defendant Doe I's actions violated
11 his Fourteenth and Eight Amendment Rights because he was denied his
12 right to medical care, due process, and treated with deliberate indifference.
13 Id. at 5.

14 The following day, Defendant Doe II took Plaintiff to the
15 medical clinic. Id. At the medical clinic, Defendant Gray disregarded
16 Plaintiff's request to be seen immediately. Id. Plaintiff alleges that
17 Defendant Gray sent him away with no medical treatment. Id. Plaintiff
18 was seen by Defendant Fox the following day. Id. Plaintiff was diagnosed
19 with injuries to his left heel and abrasions to his lower extremities. Id. at 9.
20 Furthermore, Plaintiff was diagnosed with a ruptured globe full-thickness
21 corneal laceration on his left eye, essentially a ruptured eye. Id. Plaintiff
22 was prescribed moxifloxacin eye drops, oxycodone, and IV fentanyl. Id.
23 Plaintiff was also ordered for an x-ray. Id.

24 It was later determined that Plaintiff's left eye was infected
25 and required surgery. Id. at 6. Plaintiff alleges that the untimely medical
26 treatment resulted in vision loss of his left eye. Id. Furthermore, Plaintiff
27 alleges that he did not receive adequate medical care from Defendant Fox
28 because he was unable to be seen regularly as required. Id. Plaintiff states
that his medical appointments have continuously been rescheduled for
nearly two years as a result of the COVID-19 pandemic. Id. at 7. Plaintiff
alleges that Defendant Fox knew the seriousness of his injuries and
deliberately chose to ignore it. Id. at 6.

On June 4, 2021, Plaintiff received a response regarding his
health care grievance dated January 22, 2021. Id. at 13. The response
letter stated that Plaintiff has been prescribed lisinopril, allopurinol, and
etodolac to mitigate general aches and pain. Id. at 15. Also, Plaintiff's
medical records confirm that he was placed on a care plan and his primary
care provider has discussed the care plan with him. Id. On August 19,
Plaintiff received another response regarding his health care grievance. Id.
at 16. The response letter confirmed that Plaintiff's medical records
reflect that his Disability Placement Program and his Verification and
Comprehensive Accommodation have been updated. Id. at 17. Records
accurately reflect that Plaintiff requires the bottom level of the bunk bed as
of January 1, 2021. Id. Lastly, the response letter states that Plaintiff's
vision has been gradually deteriorating and there is vision loss on his left
eye due to the ruptured globe. Id. A referral has been placed to optometry,
but Plaintiff's condition did not require an urgent outside referral. Id.

ECF No. 11, pgs. 2-4.

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The Court determined that Plaintiff states a cognizable Eighth Amendment medical care claim against Defendants Gray and Doe I. See id. at 4. The Court, however, found that Plaintiff failed to state a cognizable Eighth Amendment claim against Defendants Fox and Doe II because Plaintiff has not alleged deliberate indifference as to either defendant. See id. at 4-7. Finally, the Court concluded that Plaintiff fails to allege sufficient facts to establish liability of Defendant St. Andre, who holds a supervisory role. See id. Plaintiff was provided an opportunity to file a first amended complaint to address the defects identified in the Court's screening order. See id. at 7. Plaintiff was cautioned that failure to file an amended complaint within the time permitted therefor would result in the defective claims/defendants being subject to dismissal. See id. To date, and despite numerous extensions of time, Plaintiff has elected not to file an amended complaint. The Court, therefore, recommends dismissal of certain claims and defendants consistent with the September 21, 2022, screening order. By separate order issued herewith, the Court directs service of process on Defendant Gray.

Based on the foregoing, the undersigned recommends that:

1. This action proceed on Plaintiff's original complaint as to Plaintiff's Eighth Amendment medical care claim against Defendants Gray and Doe I;
2. All other claims are dismissed; and
3. Fox, St. Andre, and Doe II are dismissed as defendants to this action.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days after being served with these findings and recommendations, any party may file written objections with the Court. Responses to objections shall be filed within 14 days after service of objections. Failure to file objections within the specified time may waive the right to appeal. See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

Dated: April 3, 2023



DENNIS M. COTA
UNITED STATES MAGISTRATE JUDGE